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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,270	11/23/2001	Kazuo Horikawa	VX012386	2409
21369	7590	05/04/2005	EXAMINER	
VARNDELL & VARNDELL, PLLC 106-A S. COLUMBUS ST. ALEXANDRIA, VA 22314				VAN PELT, BRADLEY J
ART UNIT		PAPER NUMBER		
		3682		

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/990,270	HORIKAWA, KAZUO
	Examiner	Art Unit
	Bradley J. Van Pelt	3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 18 February 2005.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 6-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 6-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rabe (USPN 4,641,545) in view of Ojima (USPN 6,352,133).

Rabe discloses a lock lever device (10) for a working implement drive control system of a construction machine vehicle (see abstract, harvesters are construction machine vehicles), the construction machine vehicle comprising a drivers seat (inherent) and a passage way to the drivers seat (inherent) and the lock lever device comprises a locking lever (12), and a linkage (26) that links the locking lever and the control selector (clutch see column 2, line 53 or 30) together, the locking lever and the linkage providing a rocking stroke for operating the locking lever, the linkage including an idle motion stroke mechanism (26) for switching controllable and uncontrollable states at a point of the rocking stroke of the locking lever and for idling between the point of the rocking stroke and a first end point of the rocking stroke of the locking lever;

the locking lever includes an output lever (16); and the linkage includes an intermediate rocking lever link (26) responding to the rocking stroke of the locking lever, and a link rod (32) for transmitting motion from the intermediate rocking lever link to the control selector, and the linkage further includes a mechanism (64) engaging the output lever of the locking lever for pulling or pushing the intermediate rocking lever link between the point of the rocking stroke

and a second end point of the rocking stroke of the locking lever and for idling motion of the intermediate rocking lever between the point of the rocking stroke and the first end point of the rocking stroke of the locking lever;

the mechanism includes a cam pin (64) mounted on the output lever of the locking lever, and an arcuate cam groove formed in the intermediate rocking lever link, the arcuate cam groove receiving and guiding the cam pin of the output lever of the locking lever, and the arcuate cam groove including an action transmitting cam groove portion (60b) corresponding to the rocking stroke of the output lever of the locking lever for transmitting the pulling or pushing action to the intermediate rocking lever link, and an inaction transmitting cam groove portion (72) corresponding to the rocking stroke of the output lever of the locking lever for transmitting no motion to the intermediate rocking lever link (26);

the locking lever includes a toggle spring (78) for biasing rocking action along the action transmitting cam groove portion and the inaction transmitting cam groove portion in opposite rocking directions from an intermediate position of the arcuate cam groove; working implement drive control system between controllable and uncontrollable states by operating the locking lever.

Rabe does not disclose the idle motion stroke occurs at a midway point of the rocking stroke; nor the locking lever blocking operator passage through the passageway when switched to the controllable state and permitting operator passage through the passageway and when switched to the uncontrollable state.

Ojima shows a locking lever (29) blocking operator passage (position A) through the passageway when switched to the controllable state and permitting operator passage through the

passageway and when switched to the uncontrollable state (position B) (see column 8, lines 29-51).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the arcuate groove of Rabe so that the inaction portion occurs at a midway point for design functionality, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the inaction portion at a midway point, since it has been held that rearranging parts of an invention involves only routine skill in the art.

To modify the apparatus of Rabe so as to provide the lever in a blocking position during a controllable state and a non-blocking position during an uncontrollable state would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Ojima that such an arrangement improves the ability to prevent the operator on the operator's seat from inadvertently getting off the cab (see column 8, line 51 in Ojima).

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rabe in view of Ojima as applied to claims 6-9 above, and further in view of Coutant (USPN 6,425,729).

The above reference combination shows all of the instantly claimed invention except the control selector lever switches a pilot circuit.

Coutant shows the control of pilot circuit 78 with a control selector lever 74.

To modify the above reference combination so as to control a pilot circuit with a control selector lever would have been obvious to one of ordinary skill in the art at the time the invention

was made in view of the teachings of Coutant that such an arrangement improves proportional controlling of the device.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rabe in view of Ojima as applied to claims 6-9 above, and further in view of Scag et al. (USPN 6,341,479).

The above reference combination shows all of the instantly claimed invention except the linkage directly and independently links the locking lever and the control selector lever together.

Scag et al. show a linkage 44 directly and independently links the locking lever 40 and the control selector lever 40 together.

To modify the above reference combination so as to link the linkage directly and independently to the locking lever and the control selector lever together selector would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Scag et al. that such an arrangement improves the ease at which the device is controlled of the device.

#### *Response to Arguments*

5. Applicant's arguments filed February 18, 2005 have been fully considered but they are not persuasive.

The applicant argues that the Rabe reference does not disclose "a second endpoint of travel of the locking lever, where the control lever is in the uncontrollable state as required by the claims." However, in column 3, lines 40-45, Rabe sets forth "because of the concentricity of this portion [main portion 70] of the guide slot with the lever pivot axis (2), the position of the secondary lever 26 remains unchanged." Thus, when the cam follower roller 62 is in the main portion 70, the control selector is in an uncontrollable state. Rabe anticipates this limitation.

The applicant argues that it would have not been obvious to one of ordinary skill in the art to locate the idle motion stroke at a midway point of the rocking stroke. To locate the idle motion stroke a midway point of the rocking stroke would have been a matter of design choice to one of ordinary skill in the art. The applicant has not provided any evidence that placing the idle motion stroke at a midway point of the rocking stroke solves any particular problem or produces any unexpected result. *In re Chu*, 66 F.3d 292, 299 (Fed. Cir. 1995).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### *Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley J. Van Pelt whose telephone number is (571)272-7113.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on (571)272-7099. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BJVP 



Thomas R. Hannon  
Primary Examiner